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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 BRIAN H. SANTOS,)
9 Plaintiff,) CASE NO. C16-0434RSM
10 v.) ORDER GRANTING IN PART
11 U.S. BANK NATIONAL ASSOCIATION,) PLAINTIFF'S MOTION TO STAY
12 *et al.*,)
13 Defendants.)

14
15 **I. INTRODUCTION**

16 This matter comes before the Court on Plaintiff's second Motion for Stay of Proceedings
17 pursuant to the Servicemembers Civil Relief Act ("SCRA"). Dkt. #32. The Court has reviewed
18 the motion, the opposition thereto, the reply in support thereof, and the attendant Declarations
19 and Exhibits. For the reasons set forth herein, the Court now GRANTS IN PART Plaintiff's
20 motion.
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22 **II. BACKGROUND**

23 Plaintiff, Brian Santos, initially filed his Complaint for Damages in King County Superior
24 Court. Dkt. #4. Defendants removed the action to this Court on March 25, 2016. Dkt. #1.
25 Plaintiff alleges that:

26 3.2 At all times material and relevant hereto [he] was an active duty
27 member of the United States Air Force.
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1 3.3 At all times material and relevant hereto, [his] then-wife was also
2 an active duty member of the United States Air Force.

3 3.4 Defendant US BANCORP, doing business as US Bank and US
4 Bank Home Mortgage, holds the mortgage to [his] home located at 19007 SE
5 260th Street in Covington, King County, Washington.

6 3.5 On or about September 1, 2012, [he] spoke with Jordan Clark of
7 Defendant US BANCORP, d/b/a US Bank, regarding his active duty status
8 to ensure his home would be protected while he was deployed.

9 3.6 On said occasion, Jordan Clark assured [him] that he was
10 protected under the Servicemembers Civil Relief Act (SCRA) and no
11 negative action would be taken against him by the bank for any missed
12 mortgage payments.

13 3.7 On or about September 11, 2012, Jill Payne, E-mail
14 Representative of the Special Loans Department of Defendant US
15 BANCORP emailed [him] and advised him that the SCRA did apply to his
16 mortgage on the subject property and should he become delinquent on his
17 mortgage payments, the bank could not take action against him.

18 3.8 On or about September 16, 2012, [he] responded to Jill Payne's
19 email seeking further confirmation that he was fully enrolled in the program
20 ensuring his protection under the SCRA and advised Ms. Payne that Jordan
21 Clark had previously assured him that US BANCORP, d/b/a US Bank, would
22 fully exonerate him for any missed mortgage payments and asked Ms. Payne
23 for confirmation this statement by Jordan Clark was indeed true.

24 3.9 On or about September 17, 2012, Jill Payne responded to [his]
25 email and confirmed his accounts with US Bank were "set up in accordance
26 with the Servicemembers Civil Relief Act through [his] September 1, 2014,
27 payment." She went on to state, "... you will not accrue any late charges
28 through this date and we will not report you to the credit bureaus through
29 November 28, 2013." Ms. Payne further confirmed that "[d]uring [his]
30 period of active duty and for nine months thereafter, [he would] not be in
31 danger of foreclosure..." and advised him that "[a]s of today, neither loan is
32 being reviewed for foreclosure, so ... [he was] not going to lose [his] home."

33 3.10 On or about November 27, 2012, Defendant US BANCORP, by
34 and through Jessica Brazier, Special Loans Specials with US Bank's Special
35 Loans Department, sent [him] a letter again confirming his protection under
36 the SCRA based upon his active duty status in the US military.

37 3.11 Defendant US BANCORP employed Defendant SAFEGUARD
38 PROPERTIES to winterize Plaintiff's Covington home and, upon

1 information and belief, hired Defendant SAFEGUARD PROPERTIES to
2 perform this work less than one month after Plaintiff had received the written
3 confirmation of November 27, 2012, that he was subject to SCRA
4 protections.

5 3.12 Upon information and belief, when Defendant US BANCORP
6 hired Defendant SAFEGUARD PROPERTIES to winterize Plaintiff's home,
7 Defendant US BANCORP, by and through its duly authorized agents or
8 employees, informed Defendant SAFEGUARD PROPERTIES that
9 Plaintiff's mortgage was in default and that the subject residence was an asset
10 of the bank and therefore needed winterization to preserve said asset.

11 3.13 Defendant SAFEGUARD PROPERTIES then hired Defendant
12 QUEST PRESERVATION to perform said winterization.

13 3.14 Defendant QUEST PRESERVATION hired Bryan Anderson to
14 complete the winterization of Plaintiff's home in Covington, Washington.

15 3.15 On or about December 28, 2012, Defendant QUEST
16 PRESERVATION issued work order #115592 to Bryan Anderson to
17 winterize the subject property.

18 3.16 On or about December 29, 2012, Bryan Anderson and his sister,
19 Cheryl Anderson, entered Plaintiff's home.

20 3.17 On said occasion, Bryan Anderson replaced the front door locks
21 with a new one so that Defendant SAFEGUARD PROPERTIES would have
22 access to Plaintiff's home.

23 3.18 In the course of winterizing Plaintiff's home, Bryan and Cheryl
24 Anderson unlawfully removed personal property belong to Plaintiff and also
25 caused damage to the home itself.

26 3.19 Upon information and belief, over the course of four days, Bryan
27 Anderson removed numerous items belonging to Plaintiff.

28 3.20 In the course of winterizing Plaintiff's home and removing
Plaintiff's personal property from the residence, Bryan Anderson informed
Plaintiff's neighbors that [his] mortgage was in default and was being
repossessed by the bank.

3.21 Bryan Anderson then pawned and/or otherwise attempted to sell
the personal property he stole from Plaintiff's residence.

1 3.22 On or about December 31, 2012, Jessica Brazier again sent a
2 letter to Plaintiff advising him that the bank was issuing him a refund of a late
fee due to his protection under the SCRA.

3 3.23 On or about January 4, 2013, Bryan Anderson opened a bank
4 account with Defendant US BANCORP, via a US Bank branch, with a check
he obtained from selling Plaintiff's personal property.

5 3.24 On or about February 24, 2013, Plaintiff [], having been granted
6 a one-week leave from him deployment in Korea, arrived at the Covington
7 home and discovered his key no longer worked to unlock the front door.
8 Unable to get into his home, Plaintiff called 911, who advised him to contact
his bank.

9 3.25 Plaintiff [] contacted Defendant US BANCORP the next day,
10 February 25, 2013, and notified said Defendant, by and through its duly
11 authorized employee(s) and/or agent(s) of the violation of Defendant US
12 BANCORP'S prior guarantees that he was protected by the SCRA and also
providing notice to said Defendant that many personal items had been stolen
from his residence.

13 3.26 Upon information and belief, his file and his corresponding claim
14 for damages was transferred to Defendant US BANCORP'S Loss Draft
15 Processing Center, a division of US Bank.

16 3.27 On or about February 28, 2013 and again on or about March 1,
17 2013, Plaintiff received emails from Defendant US BANCORP'S Loss Draft
18 Processing Center, confirming receipt of his claim and advising Plaintiff it
was currently being reviewed.

19 3.28 On or about March 2 or 3, 2013, Gregg Speer, Sr., Vice President
20 of Residential Homes Default Counseling, a division of Defendant US
21 BANCORP, called Plaintiff and promised him that the bank "would make
22 this right" and further promised immediate financial assistance to Plaintiff to
offset the costs and losses Plaintiff had suffered as a result of the wrongful
pre-foreclosure actions taken by Defendant US BANCORP.

23 3.29 After having admitted the pre-foreclosure actions previously
24 taken by Defendant US BANCORP were wrongful and should not have
25 occurred, Defendant US BANCORP, by and through US Bank's Residential
26 Mortgage Default and Management Division, sent Plaintiff another Pre-
Foreclosure Notice on or about June 19, 2013.

27 3.30 Around the time Defendant US BANCORP sent Plaintiff the Pie-
28 Foreclosure Notice in June of 2013, Plaintiff's neighbors contacted him to let

1 him know that another home preservation company had been seen on
2 Plaintiff's property.

3 Dkt. #4, *Complaint* at ¶¶ 3.2-3.30.

4 As a result, Plaintiff has brought claims against Defendant U.S. Bank for Violation of the
5 Consumer Protection Act and Fraud, and against all Defendants for Violation of the
6 Servicemembers Civil Relief Act, Negligence, Negligent Infliction of Emotional Distress,
7 Intentional Infliction of Emotional Distress, and Vicarious Liability. *Id.* at ¶¶ 4.1-10.9.

8 Discovery proceeded in this matter, and trial was initially set for May 30, 2017. Dkt. #11.
9 Prior to the discovery deadline of February 1, 2017, Defendants filed a motion to compel
10 responses to written discovery and the deposition of Plaintiff. Dkt. #16. That motion was noted
11 for consideration on January 20, 2017. *Id.* Plaintiff followed with a motion for a stay of this
12 matter pursuant to the SCRA, seeking a stay until May of 2018. Dkt. #24.

13 On February 14, 2017, the Court entered an Order striking Defendant's motion to compel
14 and entering a stay. Dkt. #28. In so ruling, the Court noted that it agreed with Defendant there
15 were ambiguities with the information provided, and particularly with the letter from Plaintiff's
16 commanding office. Dkt. #28 at 7. However, the Court ultimately found that Plaintiff had
17 satisfied the requirements of the Act and granted a limited stay to August 18, 2017. *Id.* at 8.

18 Just two days before the August stay expired, Plaintiff filed the instant motion for stay.
19 Dkt. #32. Notably, at the time of filing, the motion was not supported by a Declaration from
20 Plaintiff himself, nor was there attached any letter from his commanding officer. *See id.* Instead,
21 Plaintiff's counsel stated that the motion was being filed without those supporting documents "to
22 avoid having the Court waste its time by entering a new scheduling order, and to avoid having
23 the parties waste their time by proceeding to actively litigate this case." Dkt. #32 at 3, fn. 1.
24 Plaintiff's counsel also asserted that Plaintiff was in the process of securing a letter from his
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1 commanding officer. Dkt. #33 at ¶5. On August 25, 2017, Plaintiff’s counsel then filed a
2 “Supplement” to the motion, which contained the Declaration of Plaintiff with Exhibits,
3 including a letter from his commanding officer. Dkt. #34. Defendant U.S. Bank opposes the
4 motion. The matter is now ripe for review.

5 6 III. DISCUSSION

7 As this Court explained in its prior Order staying this case, the purpose of the SCRA “is
8 to suspend enforcement of civil liabilities of persons in military service of the United States in
9 order to enable such persons to devote their entire energy to the defense of the Nation.” *Engstrom*
10 *v. First National Bank of Eagle Lake*, 47 F.3d 1459, 1462 (5th Cir. 1995). The public policy
11 behind the Act “is to allow military personnel to fulfill their duties unhampered by obligations
12 incurred prior to their call.” *Omega Industries, Inc. v. Raffaele*, 894 F. Supp. 1425, 1434 (D.
13 Nev. 1995). Further, the provisions of the Act are to be “liberally construed” and applied in a
14 “broad spirit of gratitude towards service personnel.” *Engstrom*, 47 F.3d at 1462; *Omega*
15 *Industries, Inc.*, 894 F. Supp. at 1434 (citations omitted). As a result, the Court “must exercise
16 extreme caution in withholding the protection” of the Act. *Omega Industries, Inc.*, 894 F. Supp.
17 at 1434. Nevertheless, the Act “is not to be used as a sword against persons with legitimate
18 claims,” and the Court must give “equitable consideration of the rights of parties to the end that
19 their respective interests may be properly conserved.” *Engstrom*, 47 F.3d at 1462.

22 Section 522 of the SCRA “applies to any civil action in which the plaintiff or defendant
23 at the time of filing” a request for a stay under that section: “(1) is in military service or is within
24 90 days after termination of or release from military service; and (2) has received notice of the
25 action or proceeding.” 50 App. U.S.C.A. § 522(a). These requirements have been met here.
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1 A stay may be obtained “[a]t any stage before final judgment in a civil action or
2 proceeding” either “upon application of the servicemember” or by the Court “on its own motion
3 . . . for a period of not less than 90 days.” 50 App. U.S.C.A. § 522(b)(1). In order to obtain a
4 stay, the application must include:

5 (A) A letter or other communication setting forth facts stating the manner in
6 which current military duty requirements materially affect the
7 servicemember’s ability to appear and stating a date when the servicemember
8 will be available to appear.

9 (B) A letter or other communication from the servicemember’s commanding
10 officer stating that the servicemember’s current military duty prevents
11 appearance and that military leave is not authorized for the servicemember at
12 the time of the letter.

13 50 pp. U.S.C.A. § 525(b).¹

14 In support of his current motion, Plaintiff has submitted a letter dated August 23, 2017,
15 from his commanding officer which states that Plaintiff’s current military assignment “prevents
16 his appearance in the Continental United States for trial”; Plaintiff “does not have enough accrued
17 Leave days to sustain prolonged participation in these upcoming proceedings for a timeframe of
18 30 days or more”; and Plaintiff will separate from the Air Force in three years and after that he
19 will have more flexibility and availability. Dkt. #34, Ex. 3.²

21 ¹ “Where the servicemember fails to satisfy the conditions . . . a stay is ‘not mandatory,’ but the
22 Court retains ‘discretion to grant or deny the stay depending on the circumstances presented.’”
23 *Ovieda v. Sodexo Operations, LLC*, 2012 U.S. Dist. LEXIS 197097, *5 (C.D. Cal. Nov. 7, 2012);
24 *see also In re Marriage of Herridge*, 169 Wn. App. 290, 292, 279 P.3d 956, 957 (Div. I, July 2,
25 2012) (“[I]n order to be entitled to such a stay, the servicemember must present to the court
26 certain statutorily specified information regarding his or her military duty. Where the
servicemember fails to do so, the SCRA does not entitle the servicemember to this relief.
Although the court may issue a stay of proceedings on its own motion, such a stay is
discretionary.”).

27 ² In violation of this Court’s Local Rules, this letter was submitted through an untimely
28 Declaration filed without leave of the Court. *See* LCR 7(d). In addition, he has submitted a
second copy of his orders stationing him in Germany, and his specific position appointment letter

1 The Court agrees with Defendant that there are deficiencies with the letter from Plaintiff's
2 commanding officer. In contravention to the SCRA, the letter does not state that military leave
3 is not authorized for Plaintiff at the time of the letter. See Dkt. #34, Ex. 3. Moreover, both
4 Plaintiff and his commanding officer continue to frame his potential leave in a "30 day time
5 period," which is nonsensical given that there is no trial date currently scheduled, the parties last
6 informed the Court that any trial was expected to last 6-8 days, and any deposition is limited to
7 seven hours by the Federal Rules of Civil Procedure. However, once again in an abundance of
8 caution, the Court finds that Plaintiff has satisfied the requirements of the SCRA and will grant
9 a stay, albeit for a shorter duration than requested as noted below.³
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11 IV. CONCLUSION

12 Having reviewed Plaintiff's motion, the opposition thereto and reply in support thereof,
13 along with the Declarations and exhibits and the remainder of the record, the Court hereby finds
14 and ORDERS:
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- 16 1. Plaintiff's Motion for Stay (Dkt. #32) is GRANTED IN PART. This litigation is
17 STAYED until **November 10, 2017**. If, by that date, an application for additional
18 stay is filed by Plaintiff under 50 App. U.S.C. § 522(d)(1), that application shall again
19 contain the information required under 50 App. U.S.C. § 522(b)(2), including a letter
20 or other communication from Plaintiff's commanding officer. **Further, Plaintiff is**
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24 which states that he needs to be prepared for a potential deployment at any time. Dkt. #34, Exs.
25 1 and 2.

26 ³ As the Court noted previously, to prevent prejudice against an absent party, courts may grant
27 a stay even where a servicemember does not fully satisfy both conditions enumerated in section
28 (b)(2) of the SCRA. See, e.g., *Keane v. McMullen*, 2009 U.S. Dist. LEXIS 10389, 2009 WL
331455, *3 (N.D. Cal. Feb. 11, 2009) (granting a stay where a servicemember did not produce a
letter from his commanding officer regarding his leave status because the court was sufficiently
convinced that a stay was necessary to avoid undue prejudice).

1 warned that if he fails to comply with the filing requirements set forth in this
2 Court's Local Civil Rule 7, and fails to comply with the requirements of the
3 SCRA in their entirety, the Court will deny such a motion.⁴ Plaintiff has more
4 than 60 days to comply with his statutory requirements and the Court expects
5 that both he and his counsel will prepare for any future motion with the
6 professional attention it deserves.
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- 8 2. The Clerk will issue an Amended Scheduling Order once the stay is lifted in this
9 matter. Further, once the stay is lifted, only those case deadlines that had not passed
10 as of the date of the Court's initial stay Order (2/14/2017) will be re-scheduled. With
11 the exception of the discovery at issue in Defendant's prior motion to compel (Dkt
12 #16), no further discovery shall be taken once the stay is lifted unless otherwise
13 ordered by the Court.
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15 3. As noted in the Court's prior stay Order, nothing precludes Defendant from filing a
16 subsequent motion to compel once the stay is lifted should that become necessary.
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18 DATED this 7th day of September, 2017.

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21 RICARDO S. MARTINEZ
22 CHIEF UNITED STATES DISTRICT JUDGE
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26 ⁴ The Court also notes that Plaintiff has informed the Court of "his tentative plans" to request
27 leave to travel to the United States in February of 2018, and that if he is granted such leave he
28 will arrange to have his deposition taken during that time. Dkt. #38. Any future motions made
by Plaintiff pertaining to the case schedule in this matter shall inform the Court whether he indeed
requested leave and whether that request was granted or denied.